

COHELAN KHOURY & SINGER

Michael D. Singer (SBN 115301)

msinger@ckslaw.com

Kristina De La Rosa (SBN 279821)

kdelarosa@ckslaw.com

605 C Street, Suite 200

San Diego, CA 92101

Telephone: (619) 595-3001/Facsimile: (619) 595-3000

MESRIANI LAW GROUP, APLC

Rodney Mesriani (SBN 184875)

rodney@mesriani.com

510 Arizona Avenue

Santa Monica, CA 90401

Telephone: (310) 826-6300/Facsimile: (310) 820-1258

Attorneys for Plaintiff DAYANNA GOROSAVE
on behalf of herself and other aggrieved employees**SUPERIOR COURT OF THE STATE OF CALIFORNIA****FOR THE COUNTY OF LOS ANGELES**DAYANNA GOROSAVE, on behalf of
herself and other aggrieved employees,

Plaintiff,

vs.

CVHCARE HOLDINGS, INC., a
California Corporation; and DOES 1
through 10, inclusive,

Defendants.

CASE NO. 21VECV01154

**FIRST AMENDED COMPLAINT FOR
RECOVERY OF CIVIL PENALTIES
PURSUANT TO THE PRIVATE
ATTORNEYS GENERAL ACT ("PAGA")**

- 1. CIVIL PENALTIES UNDER THE
PAGA FOR FAILURE TO PAY
MINIMUM WAGES AND/OR
OVERTIME WAGES**
- 2. CIVIL PENALTIES UNDER THE
PAGA FOR FAILURE TO PROVIDE
MEAL PERIODS**
- 3. CIVIL PENALTIES UNDER THE
PAGA FOR FAILURE TO PROVIDE
REST PERIODS**
- 4. CIVIL PENALTIES UNDER THE
PAGA FOR FAILURE TO PROVIDE
ACCURATE ITEMIZED WAGE
STATEMENTS**
- 5. CIVIL PENALTIES UNDER THE
PAGA FOR FAILURE TO TIMELY
PAY ALL WAGES DUE UPON
TERMINATION OF EMPLOYMENT**

FILED
Superior Court of California
County of Los Angeles**10/18/2021**

Sherri R. Carter, Executive Officer / Clerk of Court

By: L. Marquez Deputy

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6. **CIVIL PENALTIES UNDER THE
PAGA FOR FAILURE TO MAINTAIN
ACCURATE RECORDS**
7. **PAGA CIVIL PENALTIES FOR
REQUIRING AN UNLAWFUL
AGREEMENT**

1 Plaintiff DAYANNA GOROSAVE (“Plaintiff”), on behalf of others aggrieved and as a
2 Representative of the State of California’s Labor and Workforce Development Agency
3 (“LWDA”), hereby alleges as follows:

4 I.

5 **INTRODUCTION**

6 1. Plaintiff brings this proposed PAGA Representative Action against her former
7 employers and Defendants CVHCare Holdings, Inc. (referred to as “CVHCare”) and DOES 1-10
8 (CVHCare and DOES 1-10 are collectively referred to as “Defendants”) under the California
9 Labor Code to recover civil penalties arising out of Defendants’ multiple labor code violations as
10 described herein.

11 2. Specifically, during all or a significant part of the applicable limitations period for
12 the time period covered by the Private Attorneys General Act of 2004 (“PAGA”), Labor Code
13 sections 2698, *et seq.*, Plaintiff alleges Defendants did not pay her or other hourly employees all
14 minimum and overtime wages. Defendants also failed to provide off-duty meal and rest periods,
15 failed to provide compliant wage statements, and failed to timely pay all wages during and upon
16 termination of employment. Plaintiff seeks to recover penalties for Defendants’ violations of the
17 labor code.

18 3. Plaintiff brings this lawsuit as a PAGA Representative Action on behalf of the
19 state of California, and aggrieved current and former non-exempt employees including, but not
20 limited to, intake coordinators, nurses, physical therapists, and home health aides. Pursuant to
21 Labor Code sections 2698, *et seq.*, Plaintiff seeks to recover civil penalties and reasonable
22 attorney’s fees and costs. Plaintiff, by operation of law, has standing and capacity to sue as a
23 representative of the State of California. Plaintiff mailed written notices of the specific provisions
24 of the Labor Code that Defendants violated, including the facts and theories to support the alleged
25 violations, to the LWDA and to Defendant CVHCare Holdings, Inc. pursuant to Labor Code
26 section 2699.3 on June 2, 2021 and August 13, 2021. Defendant CVHCare did not provide notice
27 of cure and the LWDA did not provide notice of investigation in the 65 days after the mailing of
28 the PAGA notices.

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II.

JURISDICTION AND VENUE

4. Venue as to each Defendant is proper in this judicial district, pursuant to Code of Civil Procedure section 395. Defendants conduct business in the city and county of Los Angeles in the state of California and each Defendant is within the jurisdiction of this Court for service of process purposes. The unlawful acts alleged have a direct effect on Plaintiff and other employees within the State of California and Los Angeles County. Defendants employ numerous employees in Los Angeles County and in California generally. There is no federal question at issue for removal under 28 U.S.C. section 1331, as the issues herein are based solely on California statutes and law, including the Labor Code, IWC Wage Orders, Code of Civil Procedure.

5. Plaintiff alleges, on information and belief, that no federal question is raised and that the Class Action Fairness Act ("CAFA"), 28 U.S.C. section 1332(d), does not apply, or in the alternative, that exceptions for local case or controversy under the CAFA do apply and prohibit removal of the action to federal court. Plaintiff is also informed and believes that her individual PAGA claims do not arise to the necessary amount in controversy to implicate traditional jurisdiction under 28 U.S.C. section 1332(a) or jurisdiction under the CAFA. Further, PAGA civil penalty actions are not subject to federal jurisdiction.

III.

THE PARTIES

6. Plaintiff DAYANNA GOROSAVE is a former non-exempt hourly employee of Defendants. At all relevant times, she was employed by Defendants as an intake coordinator in Los Angeles County from approximately February 10, 2020 until her discharge in or around April 22, 2021.

7. Plaintiff alleges that all other non-exempt hourly employees in the State of California worked under Defendants' policies and as a result, suffered the same violations of the California Labor Code as alleged herein.

8. Plaintiff is an "aggrieved employee" because she was employed by the alleged violators and had one or more of the alleged violations committed against her and, therefore, is

1 properly suited to represent the interests of all other current and former employees of Defendants.

2 9. Pursuant to Cal Labor Code section 2698, *et seq.*, Plaintiff seeks to represent all
3 current and former aggrieved employees who suffered one or more of the alleged violations
4 (“aggrieved employees”) as described herein during the applicable limitations period for the time
5 period covered by the PAGA (which is defined as any time from one year and 65 days prior to
6 the commencement of this action until the commencement of trial in the matter). The applicable
7 limitations period is referred herein as “the PAGA Period.”

8 10. Plaintiff is informed and believes and alleges Defendant CVHCare is a home-
9 based healthcare agency. CVHCare provides clinical care to its patients throughout California,
10 including Los Angeles and the Bay Area.

11 11. Pursuant to California Labor Code sections 558 and 558.1, Defendants are
12 employers of Plaintiff, and/or a person acting on behalf of Plaintiff’s employer, who violated, or
13 caused to be violated, any provision regulating minimum wages or hours and days of work in the
14 applicable Industrial Welfare Commission order, as well as California Labor Code sections 203,
15 226, 226.7, 1193.6, and 1194, and as such, are liable as an employer of Plaintiff for such violations
16 pursuant to California Labor Code sections 558 and 558.1.

17 12. At all times relevant, Defendants did, and do, transact and conduct business in the
18 state of California, including, but not limited to, within the jurisdiction of the Court. At all times
19 relevant, Defendants, and each of them, were Plaintiff’s and aggrieved employees’ employer for
20 purposes of the California wage and hour laws at issue in this action.

21 13. Plaintiff is unaware of the true names, capacities, relationships, and extent of
22 participation in the conduct alleged of Defendants sued as DOES 1 through 10, but is informed
23 and believes, and based on that alleges, DOE Defendants are legally responsible for the wrongful
24 conduct alleged, and sues these Defendants by such fictitious names. Plaintiff will amend this
25 complaint when their true names and capabilities are ascertained.

26 14. Plaintiff is informed and believes and, based thereon alleges, that each Defendant,
27 directly or indirectly, or through agents or other persons, employed Plaintiff and other aggrieved
28 employees, and exercised control over their wages, hours, and working conditions. Plaintiff is

1 informed and believes, and based thereon alleges, that each Defendant acted in all respects
2 pertinent to this action as the agent of the other Defendants, carried out a joint scheme, business
3 plan, or policy in all respects pertinent hereto, and the acts of each Defendant is legally
4 attributable to the other Defendants.

5 **IV.**

6 **GENERAL ALLEGATIONS**

7 15. At all times during the liability period, Plaintiff and other aggrieved current and
8 former employees were employed by Defendants and each of them, including Doe Defendants,
9 within the state of California.

10 16. At all relevant times, Plaintiff and other aggrieved employees of Defendants
11 worked under the same policies, practices, and procedures relating to their employment, including
12 those governing wage statements, recordkeeping, payment of wages, and provision of rest and
13 meal periods applicable to Defendants' facilities.

14 17. The California Labor Code and applicable IWC Wage Order and portions of the
15 California Code of Regulations provide that all persons employed in the State of California shall
16 be (1) presumed to be an hourly or non-exempt employee, and (2) that all "hours worked" and
17 subject to the control of the employer, whether exercised or not, are to be paid at least the
18 minimum wage as determined by the State of California, and for overtime wages at either 1.5x
19 the regular rate of pay when "hours worked" exceeds 8 hours in a single day or shift, or over 40
20 hours in a 168-total hour workweek, or 2.0x the regular rate of pay when "hours worked" exceeds
21 12 hours in a single day or shift or for the first 8 hours on the seventh consecutive day in a
22 workweek.

23 18. Plaintiff and each aggrieved employee were non-exempt employees covered under
24 one or more IWC Wage Orders ("Wage Orders"), and Labor Code section 510, and/or other
25 applicable wage orders, regulations, and statutes, and each aggrieved employee was not subject
26 to an exemption for executive, administrative, professional employees, or any other exemption,
27 which imposed an obligation on the part of the Defendants to pay Plaintiff and each aggrieved
28 employee lawful minimum and overtime compensation, as well as to provide statutory meal and

1 rest periods.

2 19. Plaintiff and each aggrieved employee worked in excess of the maximum regular
3 rate hours set by the IWC in the above Wage Orders, regulations, or statutes, and are therefore
4 entitled to appropriate overtime compensation at time and a half (1½) rate of their regular pay,
5 and when applicable, double-time rates as set forth by the above Wage Orders, regulations, and/or
6 statutes.

7 20. Upon information and belief, Plaintiff and other aggrieved employees worked in
8 non-exempt, hourly positions, and during the relevant time period, each was subject to the
9 Defendants' compensation policies that resulted in underpayment of all minimum, regular, and
10 overtime wages owed.

11 21. During the PAGA Period, Defendants maintained common policies and practices
12 of failing to pay all required wages for all hours worked due to Defendants prohibiting Plaintiff
13 and other aggrieved employees from working overtime hours, Defendants' software not recording
14 all time worked, and Defendants requiring Plaintiff and other aggrieved employees to perform
15 work while clocked out for meal periods.

16 22. During the PAGA Period, Defendants told Plaintiff and other aggrieved
17 employees not to record overtime hours worked and to clock out after working exactly eight
18 hours. Plaintiff and other aggrieved employees were reprimanded by Defendants when they
19 remained clocked in and working for longer than 8 hours. For instance, on one occasion, Plaintiff
20 remained clocked in for an extra 30 minutes past her shift end time because she was on a work
21 call with a Kaiser medical facility and she was reprimanded by Defendants for accruing overtime.
22 Plaintiff is aware of at least two other aggrieved employees who were also reprimanded by
23 Defendants for clocking out past the eight-hour mark.

24 23. During the PAGA Period, Defendants' timekeeping software and payroll practices
25 also resulted in Plaintiff and other aggrieved employees not being paid for all time worked. From
26 August 2020 onward, Plaintiff and many other aggrieved employees worked from home due to
27 the COVID-19 pandemic. Plaintiff and other aggrieved employees used Defendants' Curaetask
28 software to clock in and out for work and meal periods, to record breaks taken, and to detail all

1 daily tasks they performed when they worked from home. Plaintiff experienced problems
2 frequently with this software. For instance, the software often did not accurately register her clock
3 in and out times. Sometimes, the software would log her off automatically after 8 hours, although
4 all of her other work programs would continue to function, allowing Plaintiff to continue her
5 work. In these instances, Plaintiff was not able to adjust the times and the software would continue
6 to not register her time worked. Even though Plaintiff reported the problem to her management
7 and HR, Plaintiff noticed her times were still not corrected to reflect all hours she worked,
8 including the time she worked over eight hours per day. Additionally, Plaintiff received warnings
9 for adjusting her time worked to reflect her overtime worked. Plaintiff was even reprimanded by
10 her superiors when she complained that she was not being paid overtime.

11 24. During the PAGA Period, Defendants also required Plaintiff and other aggrieved
12 employees to be on-call and to answer phone calls, including but not limited to calls from Kaiser
13 Home Health, before they clocked in for work, after they clocked out from work, and while
14 clocked out for meal periods, but did not compensate the employees minimum, regular, and
15 overtime wages, as applicable, for this time worked.

16 25. During the PAGA Period, Defendants subjected all aggrieved employees to
17 policies and practices which failed to provide compliant meal and rest periods. Plaintiff and other
18 aggrieved employees were not provided an opportunity for each shift to take a timely, thirty-
19 minute, uninterrupted, off-duty meal period before the end of the fifth hour of work nor another
20 such meal period before the end of the tenth hour of work. Plaintiff and other aggrieved
21 employees were also not authorized or permitted to take all off-duty rest periods of at least 10
22 minutes to which they were entitled.

23 26. Defendants did not relieve employees of all work in order to take off-duty meal
24 and rest periods and instead required them to continue work throughout their shifts. Defendants
25 required Plaintiff and other aggrieved employees to be on-call and to answer phone calls,
26 including from Kaiser and other medical facilities, during their meal and rest periods. Plaintiff
27 and other aggrieved employees were reprimanded if they missed a call due to being on a meal or
28 rest period. Therefore, Plaintiff and other aggrieved employees were never relieved of their work

1 duties during their meal and rest periods. Defendants failed to pay one hour of wages at a regular
2 rate of pay for these non-compliant meal and rest periods, as required by Labor Code section
3 226.7. Defendants also failed to inform Plaintiff and other aggrieved employees of their right to
4 receive such premium wages on days on which they did not receive a compliant meal or rest
5 period.

6 27. During the PAGA Period, Defendants did not provide accurate itemized wage
7 statements containing all required categories of information to Plaintiff and other aggrieved
8 employees. For instance, because of the Defendants' failure to pay all wages earned and provide
9 all meal and rest periods and associated premium wages, the wage statements issued by
10 Defendants did not contain the correct amount of gross wages earned, net wages earned, total
11 hours worked, nor all applicable hourly rates of pay and all hours worked at each rate.

12 28. Furthermore, during the PAGA Period, Defendants failed to record (and maintain
13 records reflecting) when employees began and ended each work and meal period and the total
14 hours worked by employees, due to Defendants' software, Defendants' failure to correct time and
15 pay entries that were incorrectly recorded by the software, and Defendants' insistence that
16 employees work off-the-clock.

17 29. Defendants further knowingly required aggrieved employees to sign agreements
18 containing unlawful terms, including terms containing unlawful restrictive covenants precluding
19 employees from working for clients or competitors of Defendants upon termination. This clause
20 is an unlawful restraint of trade. Cal. Bus. Code and Professions section 1660 states that "Every
21 contract by which anyone is restrained from engaging in a lawful profession, trade or business of
22 any kind is to that extent void." *Edwards v. Arthur Anderson LLP* (2008) 44 Cal. 4th 937.
23 Accordingly, Defendants knowingly and willfully required Plaintiff and aggrieved employees to
24 sign an unlawful restrictive covenant as a requirement for employment.

25 30. Defendants knew or should have known that the terms and conditions described
26 herein were unlawful. The laws prohibiting the unlawful terms and conditions are well established
27 and any reasonable employer knows, should know or can easily discover its obligations. Any
28 employer is responsible for being knowledgeable of its duties under the labor code and business

1 and profession code. Nevertheless, Defendants required the aggrieved employees to sign
2 contracts containing unlawful terms and conditions as described herein.

3 31. As a result of the failures to pay all minimum, overtime and regular wages and
4 meal and rest period premium wages, as described herein, Defendants failed to pay Plaintiff and
5 all other aggrieved employees timely during employment as required by Cal. Labor Code section
6 204.

7 32. During the PAGA Period, Defendants maintained a regular practice of failing to
8 pay separated employees all wages owed within the time requirements of Labor Code sections
9 201-202. For instance, because Defendants failed to pay Plaintiff and other aggrieved employees
10 for all time worked during their employment, any final wages issued to aggrieved employees
11 were deficient in that they failed to include these unpaid amounts. Defendants also did not pay a
12 day's wages for every day final pay was not paid through the date final wages were paid, as
13 required by Labor Code section 203. Claimant is informed and believes that Defendants has no
14 policy or practice to comply with Labor Code sections 201, 202, and 203 as to all separated
15 employees in California by timely paying final wages and paying waiting time penalty wages
16 when failing to timely pay final wages.

17 V.

18 **CAUSES OF ACTION**

19 **FIRST CAUSE OF ACTION**

20 **Civil Penalties Under the PAGA for Failure to Pay Minimum and/or
Overtime Wages**

21 **(Labor Code §§ 510, 1194, 1197, and 1198 and the applicable IWC Wage Order)
22 (On Behalf of Plaintiff and each Aggrieved Employee Against All Defendants)**

23 33. Plaintiff incorporates the preceding paragraphs of this Complaint.

24 34. Labor Code section 1197 provides: "The minimum wage for employees fixed by
the commission or by any applicable state or local law, is the minimum wage to be paid to
25 employees, and the payment of a lower wage than the minimum so fixed is unlawful."

26 35. Labor Code section 1198 provides: "The maximum hours of work and the standard
27 conditions of labor fixed by the commission shall be the maximum hours of work and the standard
28 conditions of labor for employees. The employment of any employee for longer hours than those

1 fixed by the order or under conditions of labor prohibited by the order is unlawful.”

2 36. Labor Code section 1194(a) provides: “(a) Notwithstanding any agreement to
3 work for a lesser wage, any employee receiving less than the legal minimum wage or the legal
4 overtime compensation applicable to the employee is entitled to recover in a civil action the
5 unpaid balance of the full amount of this minimum wage or overtime compensation, including
6 interest thereon, reasonable attorney’s fees, and costs of suit.”

7 37. Labor Code section 510, states in pertinent part: “Any work in excess of eight
8 hours in one workday and any work in excess of 40 hours in any one workweek and the first eight
9 hours worked on the seventh day of work in any one workweek shall be compensated at the rate
10 of no less than one and one-half times the regular rate of pay for an employee. Any work in excess
11 of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of
12 pay for an employee. In addition, any work in excess of eight hours on any seventh day of a
13 workweek shall be compensated at the rate of no less than twice the regular rate of pay of an
14 employee.”

15 38. Labor Code section 2699(a) provides: “Notwithstanding any other provision of
16 law, any provision of this code that provides for a civil penalty to be assessed and collected by
17 the Labor and Workforce Development Agency or any of its departments, divisions,
18 commissions, boards, agencies, or employees, for a violation of this code, may, as an alternative,
19 be recovered through a civil action brought by an aggrieved employee on behalf of himself or
20 herself and other current or former employees pursuant to the procedures specified in Section
21 2699.3.”

22 39. Labor Code section 2699(f) states: “For all provisions of this code except those
23 for which a civil penalty is specifically provided, there is established a civil penalty for a violation
24 of these provisions, as follows... (2) If, at the time of the alleged violation, the person employs
25 one or more employees, the civil penalty is one hundred dollars (\$100) for each aggrieved
26 employee per pay period for the initial violation and two hundred dollars (\$200) for each
27 aggrieved employee per pay period for each subsequent violation.”

28 40. As set forth herein, and during the relevant PAGA Period, Defendants did not pay

employees all regular, minimum and overtime wages for all applicable hours worked.

41. Defendants violated Labor Code sections 510, 1194, 1197, and 1198 as well as the “Hours and Days of Work” and “Minimum Wages” and “Overtime Wages” sections of the applicable Wage Order. As a result, Plaintiff is entitled to recover civil penalties pursuant to Labor Code sections 558(a)(1)-(2), 1197.1, and 2699(a) or, in the alternative, section 2699(f)(2), attorney’s fees, expenses, and costs of suit.

42. Plaintiff, as a representative of the general public, will and does seek to recover any and all penalties for each and every violation, in an amount according to proof, as to those penalties available pursuant to the PAGA. Funds recovered will be distributed in accordance with the PAGA, with 75% of penalties recovered provided to the LWDA on behalf of the State of California.

SECOND CAUSE OF ACTION

Civil Penalties Under the PAGA for Failure to Provide Meal Periods (Labor Code §§ 226.7, 512, and 558, and the applicable IWC Wage Order) (On Behalf of Plaintiff and each Aggrieved Employee Against All Defendants)

43. Plaintiff incorporates the preceding paragraphs of this Complaint.

44. Labor Code section 226.7 provides in pertinent part:

(b) An employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health.

(c) If an employer fails to provide an employee a meal or rest or recovery period in accordance with a state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, the employer shall pay the employee one additional hour of pay at the employee’s regular rate of compensation for each workday that the meal or rest or recovery period is not provided.

45. Labor Code section 512(a) provides in pertinent part:

An employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee. An employer may not

1 employ an employee for a work period of more than 10 hours per day
2 without providing the employee with a second meal period of not less than
3 30 minutes, except that if the total hours worked is no more than 12 hours,
the second meal period may be waived by mutual consent of the employer
and the employee only if the first meal period was not waived.

4 46. Labor Code sections 2699(a) and 2699(f) provide for assessment and collection of
5 civil penalties for violations of the labor code, to be recovered through a civil action brought by
6 an aggrieved employee on behalf of himself or herself and other current or former employees
7 pursuant to the procedures specified in Section 2699.3.

8 47. Plaintiff and other aggrieved employees were not provided all meal periods as
9 required by law and were not paid a meal period premium for non-compliance with Labor Code
10 section 226.7.

11 48. Defendants' conduct violates Labor Code sections 226.7, 512, and 1198, as well
12 as the "Meal Periods" section of the applicable IWC wage Order. As a result, Plaintiff is entitled
13 to recover, civil penalties and pursuant to Labor Code sections 558(a)(1)-(2) and 2699(a) or, in
14 the alternative, section 2699(f)(2), attorney's fees, expenses, and costs of suit.

15 49. Plaintiff, as a representative of the general public, will and does seek to recover
16 any and all penalties for each and every violation, in an amount according to proof, as to those
17 penalties available pursuant to the PAGA. Funds recovered will be distributed in accordance with
18 the PAGA, with 75% of penalties recovered provided to the LWDA on behalf of the State of
19 California.

20 **THIRD CAUSE OF ACTION**

21 **Civil Penalties Under the PAGA For Failure to Provide Rest Periods** 22 **(Labor Code §§ 226.7 and 1198, and the Applicable IWC Wage Order)** **(On Behalf of Plaintiff and each Aggrieved Employee Against All Defendants)**

23 50. Plaintiff incorporates the preceding paragraphs of this Complaint.

24 51. Labor Code section 226.7 provides in pertinent part:

25 (b) An employer shall not require an employee to work during a meal or
26 rest or recovery period mandated pursuant to an applicable statute, or
27 applicable regulation, standard, or order of the Industrial Welfare
Commission, the Occupational Safety and Health Standards Board, or the
28 Division of Occupational Safety and Health.

(c) If an employer fails to provide an employee a meal or rest or recovery period in accordance with a state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest or recovery period is not provided.

52. Labor Code sections 2699(a) and 2699(f) provide for assessment and collection of civil penalties for violations of the labor code, to be recovered through a civil action brought by an aggrieved employee on behalf of himself or herself and other current or former employees pursuant to the procedures specified in Section 2699.3.

53. Defendants failed to authorize and permit all rest periods as required by law. Plaintiff and other aggrieved employees were not paid a rest period premium for non-compliance with Labor Code section 226.7.

54. Defendants violated Labor Code sections 226.7 and 1198 as well as the "Rest Periods" section of the applicable Wage Order. As a result, Plaintiff is entitled to recover civil penalties pursuant to Labor Code section 2699(a) or, in the alternative, section 2699(f)(2), attorney's fees, expenses, and costs of suit.

55. Plaintiff, as a representative of the general public, will and does seek to recover any and all penalties for each and every violation, in an amount according to proof, as to those penalties available pursuant to the PAGA. Funds recovered will be distributed in accordance with the PAGA, with 75% of penalties recovered provided to the LWDA on behalf of the State of California.

FOURTH CAUSE OF ACTION

Civil Penalties Under the PAGA for Failure to Provide Accurate Itemized Wage Statements (Labor Code § 226)

(On Behalf of Plaintiff and each Aggrieved Employee Against All Defendants)

56. Plaintiff incorporates the preceding paragraphs of this Complaint.

57. Labor Code section 226(a) states in pertinent part: "An employer, semimonthly or at the time of each payment of wages, shall furnish to his or her employee, either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately if wages are paid

1 by personal check or cash, an accurate itemized statement in writing showing”: (1) gross wages
2 earned; (2) total hours worked by the employee, except for any employee whose compensation is
3 solely based on a salary and who is exempt from payment of overtime under subdivision (a) of
4 Section 515 or any applicable order of the Industrial Welfare Commission; (3) the number of
5 piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis;
6 (4) All deductions, provided that all deductions made on written orders of the employee may be
7 aggregated and shown as one item; (5) net wages earned; (6) the inclusive dates of the period for
8 which the employee is paid; (7) the name of the employee and only the last four digits of his or
9 her social security number or an employee identification number other than a social security
10 number; (8) the name and address of the legal entity that is the employer; and (9) all applicable
11 hourly rates in effect during the pay period and the corresponding number of hours worked at
12 each hourly rate by the employee. “The deductions made from payment of wages shall be
13 recorded in ink or other indelible form, properly dated, showing the month, day, and year, and a
14 copy of the statement and the record of the deductions shall be kept on file by the employer for
15 at least three years at the place of employment or at a central location within the State of
16 California.”

17 58. Labor Code sections 2699(a) and 2699(f) provide for assessment and collection of
18 civil penalties for violations of the labor code, to be recovered through a civil action brought by
19 an aggrieved employee on behalf of himself or herself and other current or former employees
20 pursuant to the procedures specified in Section 2699.3.

21 59. Defendants have knowingly and intentionally failed to comply with Labor Code
22 section 226(a) on each and every wage statement provided to Plaintiff and other aggrieved
23 employees, by failing to provide accurate information in each of the required categories, including
24 the correct amount of gross wages earned, net wages earned, total hours worked, and all
25 applicable hourly rates of pay and all hours worked at each rate.

26 60. Labor Code section 226.3 provides for civil penalties for violations of the Labor
27 Code section 226. The civil penalty is \$250 for the initial violation and \$1,000 for each subsequent
28 violation.

61. Defendants violated Labor Code section 226. As a result, Plaintiff is entitled to recover civil penalties pursuant to Labor Code sections 226.3 and 2699(a) or, in the alternative, section 2699(f)(2), attorney's fees, expenses, and costs of suit.

62. Plaintiff, as a representative of the general public, will and does seek to recover any and all penalties for each and every violation, in an amount according to proof, as to those penalties available pursuant to the PAGA. Funds recovered will be distributed in accordance with the PAGA, with 75% of penalties recovered provided to the LWDA on behalf of the State of California.

FIFTH CAUSE OF ACTION

**Civil Penalties Under the PAGA for Failure to Pay All Wages Due During and Upon Termination of Employment
(Labor Code §§ 201-203 and 204)**

(On Behalf of Plaintiff and each Aggrieved Employee Against All Defendants)

63. Plaintiff incorporates the preceding paragraphs of this Complaint.

64. Labor Code section 204(a) states, in pertinent part: "All wages . . . earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays." Section 204(d) states: "The requirements of this section shall be deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven calendar days following the close of the payroll period." The "Minimum Wages" Section of the applicable Wage Order further states "every employer shall pay to each employee, on the established payday for the period involved, not less than the applicable minimum wage for all hours worked in the payroll period."

65. An employer who discharges an employee must pay all compensation due and to that employee immediately upon discharge. Labor Code § 201. An employer must pay all compensation due to an employee who quits within 72 hours. Labor Code § 202. If an employer willfully fails to timely pay such wages the employer must, as a penalty, continue to pay the subject employee's wages until paid or until an action is commenced, but the penalty cannot exceed 30 days' wages. Labor Code § 203.

66. Labor Code section 210(a) provides: "(a) In addition to, *and entirely independent*

1 *and apart from*, any other penalty provided in this article, every person who fails to pay the wages
2 of each employee as provided in Sections 201.3, 204, 204b, 204.1, 204.2, 204.11, 205, 205.5, and
3 1197.5, shall be subject to a civil penalty as follows: (1) For any initial violation, one hundred
4 dollars (\$100) for each failure to pay each employee. (2) For each subsequent violation, or any
5 willful or intentional violation, two hundred dollars (\$200) for each failure to pay each employee,
6 plus 25 percent of the amount unlawfully withheld.” [Emphasis added.]

7 67. California Labor Code section 256 states that a civil penalty shall be imposed “in
8 an amount not exceeding 30 days’ pay as waiting time under the terms of Section 203.”

9 68. Labor Code sections 2699(a) and 2699(f) provide for assessment and collection of
10 civil penalties for violations of the labor code, to be recovered through a civil action brought by
11 an aggrieved employee on behalf of himself or herself and other current or former employees
12 pursuant to the procedures specified in Section 2699.3.

13 69. As set forth herein, Defendants failed to pay all wages and penalties owed to
14 Plaintiff and other aggrieved employees within the timelines required by Cal. Labor Code
15 sections 201-203 and 204. Defendants further failed to pay all waiting time penalties as required
16 by Labor Code section 203.

17 70. As a result, Defendants willfully violated the Labor Code and are liable to
18 Plaintiff, and other aggrieved employees, for penalties as required by Labor Code sections 210,
19 256, and 2699(a) or, in the alternative, section 2699(f)(2), and recoverable in an amount according
20 to proof.

21 71. Plaintiff, as a representative of the general public, will and does seek to recover
22 any and all penalties for each and every violation, in an amount according to proof, as to those
23 penalties available pursuant to the PAGA. Funds recovered will be distributed in accordance with
24 the PAGA, with 75% of penalties recovered provided to the LWDA on behalf of the State of
25 California.

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SIXTH CAUSE OF ACTION

**Civil Penalties Under the PAGA for Failure to Maintain Accurate Records
(Labor Code §§ 1174 and 1198)
(On Behalf of Plaintiff and each Aggrieved Employee Against All Defendants)**

72. Plaintiff incorporates the preceding paragraphs of this Complaint.

73. Labor Code section 1174(d) requires each employee to “[k]eep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments.”

74. The “Records” section of the applicable IWC wage order requires each employer to maintain “[t]ime records showing when the employee begins and ends each work period. Meal periods, split shift intervals and total daily hours worked shall also be recorded.”

75. Labor Code section 1174.5 imposes a \$500 civil penalty for any failure to maintain records required by Section 1174(d).

76. Labor Code sections 2699(a) and 2699(f) provide for assessment and collection of civil penalties for violations of the labor code, to be recovered through a civil action brought by an aggrieved employee on behalf of himself or herself and other current or former employees pursuant to the procedures specified in Section 2699.3.

77. Defendants failed to maintain all records as required by law, including but not limited to the beginning and ending time of each work period and meal period and the hours worked daily by each of their employees.

78. As a result, Defendants willfully violated the Labor Code and are liable to Plaintiff, and other aggrieved employees, for penalties as required by Labor Code sections 1174.5 and 2699(a) or, in the alternative, section 2699(f)(2), and recoverable in an amount according to proof.

79. Plaintiff, as a representative of the general public, will and does seek to recover any and all penalties for each and every violation, in an amount according to proof, as to those penalties available pursuant to the PAGA. Funds recovered will be distributed in accordance

1 with the PAGA, with 75% of penalties recovered provided to the LWDA on behalf of the State
2 of California.

3 **SEVENTH CAUSE OF ACTION**

4 **Civil Penalties Under the PAGA for Requiring an Unlawful Agreement**
5 **(Labor Code § 432.5)**

6 **(On Behalf of Plaintiff and each Aggrieved Employee Against All Defendants)**

7 80. Plaintiff incorporates the preceding paragraphs of this Complaint.

8 81. It is illegal for an employer to require an employee to agree in writing to any term
9 that the employer knows is illegal. Labor Code § 432.5.

10 82. Labor Code sections 2699(a) and 2699(f) provide for assessment and collection of
11 civil penalties for violations of the labor code, to be recovered through a civil action brought by
12 an aggrieved employee on behalf of himself or herself and other current or former employees
13 pursuant to the procedures specified in Section 2699.3

14 83. Labor Code section 432.5 states: “No employer, agent, manager, superintendent,
15 or officer thereof, shall require any employee or applicant for employment to agree in writing, to
16 any term or condition, which is known by such employer, or agent, manager, superintendent, or
17 officer thereof to be prohibited by law.”

18 84. California Business and Professions Code section 16600 provides that “every
19 contract by which anyone is restrained from engaging in a lawful profession, trade, or business
20 of any kind is to that extent void.” There are no narrow-restraint exceptions to Bus. & Prof. Code
21 section 16600. *Edwards v. Arthur Andersen LLP* (2008) 44 Cal. 4th 937.

22 85. Defendants violated Labor Code section 432.5 when they required Plaintiff and
23 other aggrieved employees to sign a non-compete agreement prohibiting them from engaging in
24 any competitive activity and from working for any competitor or client after termination of
25 employment.

26 86. As a result, Defendants willfully violated section 432.5 of the Labor Code and are
27 liable to Plaintiff, and other aggrieved employees, for penalties as required by Labor Code section
28 2699(a) or, in the alternative, section 2699(f)(2), and recoverable in an amount according to proof.

87. Plaintiff, as a representative of the general public, will and does seek to recover

any and all penalties for each and every violation in an amount according to proof, as to those penalties available pursuant to the PAGA. Funds recovered will be distributed in accordance with PAGA, with 75% of the penalties recovered provided to the LWDA on behalf of the State of California.

VII.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, on behalf of herself and all other aggrieved employees and as a Representative of the Labor and Workforce Development Agency, prays for judgment as follows:

a. For maintenance of this claim as a Representative Action under the PAGA, and providing Plaintiff and her counsel with all enforcement capability as if this action has been instituted by the Department of Labor Standards enforcement ("DLSE");

b. For recovery of civil penalties as permitted by Labor Code sections 2699.3, 1197.1, and 558(a)(1)-(2), in an amount according to proof;

c. For recovery of civil penalties as permitted by Labor Code section 226.3, for failing to provide accurate itemized wage statements, in an amount to be assessed and according to proof;

d. For recovery of civil penalties as permitted by Labor Code sections 210, for failing to pay wages timely during employment;

e. For recovery of civil penalties as permitted by Labor Code section 256 for failing to provide wages timely to terminated employees upon separation of employment;

f. For recovery of civil penalties as permitted by Labor Code section 1174 and 1174.5 for failing to maintain records;

g. For recovery of civil penalties pursuant to Labor Code section 2699(f)(2), to the extent that Section 2699(a) does not apply and/or where a statutory civil penalty is not provided, for failing to comply with Labor Code sections 201-203, 204, 226, 226.7, 432.5, 1174, 1194, 1197, and 1198.

h. For Pre-Judgment and Post-Judgment interest, to the extent permitted by law as to any restitution recovery;

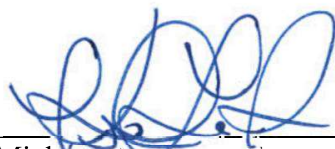
1 i. For Attorneys' fees and costs of suit, including expert fees and fees pursuant to
2 California Labor Code sections 218.5, 226(e), 1194, the PAGA, and/or Code of Civil Procedure
3 section 1021.5 on a public benefit theory; and all other applicable state laws;

4 j. For injunctive relief; and

5 k. Such other legal equitable relief as this Court deems necessary, just, equitable and
6 proper.

7 **COHELAN KHOURY & SINGER**

8
9 Dated: October 18, 2021

By: 

Michael D. Singer, Esq.

Kristina De La Rosa, Esq.

Counsel for Plaintiff DAYANNA GOROSAVE